From the Office of Certified Genealogist & Researcher

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TO: Elizabeth Appel, Acting Director, Office of Regulatory Affairs & Collaborative Action

FROM: Lorraine Escobar, Certified Genealogist/Native American Lineages

RE: Comment on the Proposed Revisions to 25 CFR 83

To preface this dialogue, let it be known that this letter is solely intended to provide commentary on the proposed regulatory revisions, not to formally advance the argument for any tribe in the process of 25 CFR 83, as it stands unrevised. Also, let it be known that the example of OFA errors, cited in this commentary, do not represent the total of all OFA errors in the cases of the Juaneño Band of Mission Indians [JBMI], either petitioner 84A or 84B. Any reference to records related to living persons was treated with anonymity to protect the identity of any living persons discussed in the examples contained herein. However, should Deputy Assistant Secretary, Indian Affairs, Larry Roberts wish to obtain further information, or copies of referenced documents, all effort will be made to provide such, in a timely fashion, provided permission is granted by the respective tribal councils and/or by those to whom the information pertains.

I apologize, in advance for the length of this letter. However, even in citing a few examples for an audience not intimately involved in the case of the Juaneño tribe, it is impossible to be any briefer. I hope you will take the time to read this and consider my suggestions in the proposed revisions of 25 CFR 83.

The need to elevate the standards of genealogical evidence-evaluation is critical, not just for groups vying for federal acknowledgment, under 25 CFR 83.7(e), but for federally recognized tribes dealing with enrollment matters. In my 20 years of doing genealogy for California Indians, I have observed an imbalance that is derived solely from the lack of higher standards of evidence-evaluation applied at the federal level. One federal arm, the Bureau of Indian Affairs, relies on faulty data collected in the early 1930's, known as the California Indian Jurisdictional Act [CIJA], which was based on the word of two affiants and is now being revealed as faulty in light of higher standards of evidence evaluation. But, the California BIA agencies keep using this old data which causes a plethora of problems throughout Indian country in California. Another federal arm of the federal government, the Office of Federal Acknowledgment, knows how faulty that CIJA data is and rightly refuses to accept it as proof (other than a parent's knowledge of their children) to meet 25 CFR 83.7(e).

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Although this federal-level discrepancy is not being addressed in these proposed regulatory revisions, it is a good place to begin a much needed dialogue on the matter of elevating the evidence-evaluation standards the federal government now uses.

In terms of the proposed revisions, the genealogical criteria will become a critical point for fast tracking petitions for federal recognition. This emphasis on (e) demands the evidence-evaluation standards must be elevated. Therefore, the following suggestions are being offered to bolster how genealogical evidence is evaluated. Also, suggestions are offered to address other areas of the process. All suggestions are followed by an example or two taken from the previously published PF and FD reports.

Suggestions

1. **Elevate the Genealogical Evidence-Evaluation Standards at the Federal Level** – Establish clear job description requirements that all OFA genealogical staff be certified by an outside professional agency that adheres to the Genealogical Proof Standards [GPS].[1]

   Example 1-1
   GPS 28: "Previous assumptions (presumptions) brought to the correlation, often unconsciously, are recognized, including *fundamental presumptions* … A mother is present in the place and at the time her child is born and its father was with the mother roughly ***nine months earlier*** (present-day technology excepted)." [Emphasis added]

   This GPS acknowledges biological realities, one of which is that gestation generally requires 40 weeks. In the case of the FD against the JBMI (84A), OFA erroneously declared two siblings, out of a five sibling family, as "adopted," thereby disqualifying them as having a documented connection to their mother. Thus, OFA disqualified all of their children (a total of 7 tribal members).[2] The birth certificates of these ***two siblings*** showed they were born in the same calendar year – one on January 5, 1993, and the other, on December 28, 1993 – ***50 weeks apart***.[3] The remaining 10 weeks (50 less 40) amply incorporates the usual recommended period of a 6-week abstention period after childbirth as well an additional 4-week period where no pregnancy took place.

[1] Board for Certification of Genealogists, *The BCG Genealogical Standards Manual,* Millennium Edition (Turner Publishing Company , 2000), "Evidence-Evaluation Standards," pp. 8-13.

[2] JBA 2009 ML – Descent Verification Results Alpha.

[3] 1) The names and birth certificates for the "two siblings" will be made available to the Office of Deputy Assistant Secretary – IA, Larry Roberts, upon request.

Had OFA genealogical staff been properly trained, and/or tested, in the GPS, OFA would not have erroneously presumed these children were "adopted" based on their birthdates.

Example 1-2
In the FD Against the JBMI (84A), in the case of Maria Mireles and Regina Mireles, OFA declared one of two sisters did not have enough evidence to prove her parentage even though the ***same*** evidence was submitted for each sister:

> "Although the evidence in the record documents the parentage of Regina Mireles, there is insufficient evidence that Maria Mireles is a daughter of Uriol Mireles and Zenobia Aguilar. ***There are 210 members of the JBA petitioner who claim descent from Maria Mireles, and 75 JBA members who claim descent from Regina Mireles."*** [4] [Emphasis added]

Following is a list of the evidence that was presented for both sisters that demonstrated the same type of information for each woman:

a. Census records showing each daughter with their parents.
b. County-issued marriage records for both women, in which neither indicated their parents' names.
c. Census records showing each daughter after their marriages.
d. County-issued death records for both women.

Despite having the same evidence showing the same data, OFA declared Maria was not documented but Regina was. Was the number of descendants for each one an influential factor? OFA published this declaration in the FD but later reversed its decision in its letter to the IBIA.[5] Regardless, ***had OFA genealogical staff been properly trained, and/or tested, in the GPS, OFA would not have erroneously assessed the same evidence, with the same data, in a different manner***.

2. **Establish an Additional Technical Assistance Process to Ensure Accountability & Fairness Between OFA's Decision to Issue a Negative Determination and OFA's Publication of a the Negative Determination** – A technical assistance process is in place prior to, and after, a proposed finding. However, with the removal of an appeal process, there needs to be an additional technical assistance process between the time when OFA initially decides that a petition does not meet (e) in a final determination and the time when such a final determination is published. It assures accountability as well as affording the petitioner to present additional discussion and evidence to support the genealogy.

[4] FD Against the JBMI(84A), p. 98.

[5] DOI response to IBIA from Barbara N. Cohen, September 30, 2011.

Example 2-1
As in the case of the "two siblings," their mother is still living. After the FD, and before the appeal was filed, the tribe obtained a notarized affidavit from their mother (an OFA approved Juaneño Indian) stating that she had indeed given birth to both of these children.[6] However, this affidavit could not be submitted to OFA because the FD was already published. Further, OFA made no effort to offer an explanation about its decision to declare the "two siblings" were "adopted." And, no open dialogue was permitted regarding additional evidence that would have corrected the decision.

In the case of the "two siblings," ***had there been a technical assistance process between the time of OFA's negative decision and the publication of the negative final determination, the JBMI (84A) would have been enabled to correct the findings for (e) in a timely manner for 7 tribal members.***

Example 2-2
In the negative FD against the JBMI (84A), in the case of OFA's decision to disqualify Jose Uriol Mireles in the FD, the record is clear OFA made an "error" in disqualifying 249 tribal member descendants, and then hastily retracted its decision in its letter to the IBIA.[7] Although OFA published their rationale for making the negative decision in the FD, there was no open dialogue to allow the petitioner to assist OFA to correct the record before the FD was published.

Had there been a technical assistance process between the time of OFA's negative decision and the publication of the negative final determination, the JBMI (84A) would have been enabled to correct the findings for (e) in a timely manner for 249 tribal members.

Example 2-3
In the PF Against the JBMI (84A), OFA declared a descendant (among others) of Paula Angelina (nee: Ricardes/Ross) Velardes, Valenzuela as one of the successfully documented Juaneño Indians.[8] However, in the FD, OFA reversed its previous finding and disqualified Paula Angelina as a documented Juaneño Indian, thus negatively impacting a total of 43 tribal members (34 were on the on a certified enrollment status and 9 were under administrative compliance). OFA offered no explanation for its

[6] Affidavit from the mother of the "two siblings;" her name and a copy of the affidavit will be provided to the Office of Deputy Assistant Secretary – IA, Larry Roberts, upon request.

[7] DOI response to IBIA from Barbara N. Cohen, September 30, 2011.

[8] The name of this particular descendant is being withheld at this time. However, she was one of the 13 lineages that were submitted prior to the PF. Should further information be required, it shall be provided upon request. PF reference document entitled, "JBA Members Linked or Verified to SJC Indian 2/19/2008."

reversed decision in either the FD or in OFA's genealogy worksheets for that family.[9] There was no open dialogue to allow the petitioner to assist OFA to correct the record before the FD was published.

Correct evidentiary evaluation would have enabled OFA's to properly process the complete record. (See suggestions 1 and 3.) But, the lack of an additional and timely technical assistance denied a critical dialogue which could have corrected the error before the FD was published.

Furthermore, because OFA would not grant the tribe's request to extend the period to submit its response to the PF, the tribe did not have time to collect all the evidence for the remaining 9 members who were under administrative compliance (or any others under that same administrative compliance). However, that evidence was collected, after the PF deadline, and then submitted to IBIA in the appeal, but the IBIA did not acknowledge receipt of the "new" evidence or did not have the means to evaluate it. And, without the opportunity to present this new evidence within the current 25 CFR 83.7 process, it could not be submitted to OFA for revaluation after the FD was published.

Had there been a technical assistance process between the time of OFA's negative decision and the publication of the negative final determination, the JBMI (84A) would have been enabled to correct the findings for (e) in a timely manner for 43 tribal members.

3. **Establish a Qualified Outside Entity to have Oversight on the Genealogical Evidence-Evaluation Process** – It is presumed the federal government will not deliberately misevaluate a petitioner's evidence. But, in the case of the JBMI (84A), for (e), it is extremely difficult to tell if OFA was highly incompetent or deliberately dismissed worthy evidence. (i.e. the case of Jose Uriol Mireles, Tomas Cruz, and Paula Angelina (nee: Ricardes/Ross) Velardes, Valenzuela.) Also, in its response to IBIA, OFA dismissed the tribe's effort to educate its staff and IBIA staff regarding the historical phenomenon of Indians adopting Spanish surnames, as "non-relevant" documentation. Both opinions – incompetence or deliberate sabotage – illustrate the need for some sort of professional genealogical oversight, particularly in view of the incompetence already apparent with the OFA genealogical staff.

   As background, in the PF, OFA discussed the son of Eustaquio [aka Eustaquio Ricardes] – Patricio Ricardes:

> "It appears that the family began to use the surname "Ricardes" after the 1851 baptism of Patricio, whose godfather was 'Don Patricio Ricardes' (SJC

[9] These worksheets were delivered late to the petitioner and contained no explanation.

> Baptisms #4698, 2/3/1851). The family used the surname 'Ricardes' on the 1860 Federal census."[10]

Actually, Patricio's godfather was Patricio *Sepulveda***,** not "Ricardes.**"**[11] [An oversight process by trained and/or tested professionals would have avoided that error.] But, to stay on point, the PF demonstrates how OFA struggled with Indians adopting surnames when it wrote,

> "Because of the lack of surnames and the duplication of common names, it is difficult to determine which of the Indians listed on the 1860 Federal census may be identical to the JBA petitioner's ancestors…"[12]
>
> And,
>
> "The January 1860 baptism of Inez [Ricardes, another child of Eustaquio] identifies her parents as Eustaquio and 'Maria Juana,' who are identified, without surnames, as neófitos (baptized Indians) from Mission SJC."[13]

Finally, in the FD, with the help of additional evidence submitted by the tribe after the PF, OFA acknowledged Eustaquio, a full-blooded Indian who had been baptized without a surname, became known as Eustaquio *Ricardes***.** So, OFA got it right once, but was inconsistent with applying the same logic with other similar cases, like Jose Mireles and Tomas Cruz:

<u>Example 3-1</u>
In the case of Jose Uriol Mireles, in the FD, OFA lacked consistency in their understanding of the Indian surname adoption phenomenon. It distorted the evidence and openly declared the evidence represented ***two*** such individuals ***without showing any evidence to substantiate its conclusion***. The FD states the following:

> "However, documents in the available record indicate that these are ***two different people***: Jose Ureol, the son of Fernando and Carlota (SJC Indians), and Uriol Mireles, the son of Silvestre Mireles and Carlota Ruiz."[14]

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[10] OFA PF Against the Juaneño Band of Mission Indians (84A), p. 80, footnote 84.

[11] SJC-B 4698 (3 Feb 1851), Jose Patricio de Jesus Ricardes.

[12] Ibid, p. 17, top paragraph.

[13] Ibid, p. 214, top paragraph.

[14] OFA FD Against the Juaneño Band of Mission Indians (84A), p. 98, under "#5, Fernando Valencio."

OFA did not cite which documents to which they referred. However, the tribe anticipated such confusion – in light of Indians adopting surnames – and in its response to the PF, it provided a comprehensive record detailing the life of Jose Uriol's mother, her subsequent marriages, and children from that marriage which illustrated his mother – Carlota (also known as Carlota Ruiz) – was indeed the same Indian woman from San Juan Capistrano. OFA caught this error but not until after the FD was published.[15]

> "In reviewing the request for reconsideration concerning the documentation in the record on Uriol Mireles and Jose Uriol, OFA found than ***an error occurred in the preparation of the FD*** when it indicated that certain documents were not in the record. This error impacts the evaluation in the FD of Uriol Mireles, including Maria and Regina Mireles. A review of these cited documents indicates that an additional 249 persons documented descent, raising the percentage of members that documented descent from the historical tribe …" [Emphasis added.]

Had there been an oversight process for OFA's review and evaluation of the genealogical evidence, the JBMI (84A) would have been enabled to correct the findings for (e) in a timely manner for 249 tribal members.

Example 3-2
Using the same faulty logic and offering no evidence to substantiate its conclusion, OFA made the same declaration for the Juaneño Indian ancestor – Tomas Cruz – an ancestor for members of JBMI (84B):

> "The JBA and JBB petitioner both claim that 'Tomas Cruz,' age 21, … is the same person as Jose Tomas, the son of Felis [de la Cruz] and Michaela, *indios* of SJC Mission… The petitioners also claim that Micaela Lobos, the mother of Beatrice (Oyos) Serrano and the Indian woman enumerated as "Macula" on the 1880 Federal census as the wife of Jesus Oyo, is the same person as Micaela, the Luiseño spouse of Felis (SD Marr. [no#] at SLR 4/30/1855. Other than the ***coincidence that the two Micaelas both had a son named Tomas born about 1859***, there is insufficient evidence in the record to conclude that Miguella Lovas, a.k.a. Micaela Lobo, the mother of Beatrice Oyo[s] in 1874, and the wife of Felis and mother of Jose Tomas (b. 1858). In addition, there is insufficient evidence in the record to conclude that Tomas/Thomas Cruz, the son of Micaela/Macula Oyo, is the same person as Jose Tomas, the son of Felis and Micaela, historical Indians of SJC Mission."[16]

[15] DOI response to IBIA from Barbara N. Cohen, September 30, 2011.

[16] OFA FD Against the Juaneño Band of Mission Indians (84A), pp. 99-100 and OFA FD Against the Juaneño Band of Mission Indians (84B), p. 83, under "#6, Felis [Felix Cruz]."

In the case against JBMI (84A), OFA opted to eliminate any further dialogue because no descendants of Tomas Cruz were part of its certified rolls. However, in the case against JBMI (84B), OFA's misguided opinion eliminated 79 tribal members as successfully documented.

Had there been an oversight process for OFA's review and evaluation of the genealogical evidence, the JBMI (84B) would have been enabled to correct the findings for (e) in a timely manner for 79 tribal members.

4. **Establish a Reasonable Time Frame for a Petitioner to Get a Fully Disclosed Explanation for OFA Negative Determinations.**

Example 4-1
As in the case of JBMI (84A), a large tribal membership of nearly 2,000 members dictates there must be sufficient time to address any deficiencies. In JBMI (84A)'s case, the genealogical worksheets were the only offerings made to the tribe in the way of an explanation for its negative determination for (e) outside of the FD. [The FD did not discuss the majority of the negative determinations for living tribal members]. But, these worksheets were delivered in a last-minute manner which made it very difficult to complete a thorough review before filing a response for the appeal. Furthermore, this late response coupled without full disclosure for the rationale of the negative determinations for (e), forced the tribe to second-guess OFA's rationale. Such a move cannot be viewed as fair to any petitioner.

Had there been a reasonable time frame for a petitioner to get a fully disclosed explanation for OFA negative determinations, the JBMI (84B) would have been better enabled to prepare a more effective appeal.

Commentary on the Proposal to Establish a Specific Percentage of Members

The proposal to establish a specific percentage of members who need to be qualified as documented as descended from a historic tribe or tribes misses the heart of the problem posed by OFA's current practice. It is not the established precedent of 80% that is unreasonable. What is unreasonable is the way OFA has handled the genealogical evidence thus far, particularly in the case of JBMI. This is why the most important aspect of all of these suggestions is to ensure the numbers cannot be deliberately manipulated through faulty workmanship or inside political agendas. In other words, (e) does not need a specific number; it needs a guarantee of a fair process.

Conclusion

It is my sincere hope that these suggestions will be considered in the revisions of 25 CFR 83. Had there been these types of processes and assurances in place when the JBMI (84A) submitted its response to the PF, the tribe's verified documented percentage, under (e), would have been far more than 61% (FD) and far more than 74% (DOI letter to IBIA). They would have passed 25 CFR 83.7(e) far above the established 80% precedent.[17] ***All tribes need a fair process. And, the way it stands now, even though they have the proof, they don't have a fighting chance***.

[17] This commentary does not include every error OFA committed in processing the genealogical evidence of JBMI (84A). The entire list of OFA errors and violations are already on record in the appeal JBMI (84A) made to IBIA, along with all the evidence to prove the tribe would have passed (e) at more than 86%.